

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MYRNA SANDOVAL,

Defendant.

Case No. 6:21-po-234-HBK-1

ORDER DIMISSING CASE WITHOUT
PREJUDICE UNDER FEDERAL RULE OF
CRIMINAL PROCEDURE 48(b)

This matter comes before the Court upon periodic review. Defendant Myrna Sandoval was issued a citation (No. F- 5200233) for one count of failing to pay a recreation fee on or about January 24, 2021 in violation of 36 C.F.R. § 261.17. (Doc. No. 1). After failure to make payment, an initial appearance was scheduled in this matter for May 18, 2021. (*Id.*).

The Court reviewing the citation *sua sponte* discovered it failed to advise Defendant whether the offense was subject to forfeiture of collateral or required a mandatory appearance. (Doc. No. 4). Governing law dictated that the offense charged was not subject to a mandatory appearance and Defendant should have been permitted to post collateral in lieu of appearance. (*Id.*). The Court provided the Government until July 27, 2021 to amend the violation notice pursuant to Fed. R. Crim. P. 7(e), and reset the initial appearance for September 14, 2021. (*Id.*)

The Government failed to amend the violation notice and failed to appear at the September 14, 2021 initial appearance. The Ninth Circuit has held “that under Rule 48(b) it is

1 within the court's inherent power to dismiss a case with prejudice for want of prosecution,
2 whether or not there has been a Sixth Amendment violation.” *United States v. Simmons*, 536
3 F.2d 827, 833–34 (9th Cir. 1976). Here, the government’s failure to amend the citation and
4 appear at the initial appearance constitutes “want of prosecution.” The Court accordingly
5 dismisses, without prejudice, the citation issued against Defendant.

6 Accordingly, it is **ORDERED**:

7 1. The citation issued on January 24, 2021 for failing to pay a recreation fee in
8 violation of 36 C.F.R. § 261.17 (Doc. No. 1) is DISMISSED without prejudice.

9 2. The Clerk of Court is directed to close this case.

10
11 Dated: September 22, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE